

**INITIAL STATEMENT OF REASONS
FOR
PROPOSED BUILDING STANDARDS
OF THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

**REGARDING THE CALIFORNIA BUILDINGS STANDARDS ADMINISTRATIVE CODE,
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 1**

**SUBJECT: Hospital Inspector Certification, Hospital Building Safety Board Appeals, Contracting
and Fee Refunds**

The Administrative Procedure Act (APA) requires that an Initial Statement of Reasons be available to the public upon request when rulemaking action is being undertaken. The following information required by the APA pertains to this particular rulemaking action:

STATEMENT OF SPECIFIC PURPOSE AND RATIONALE:

Part 1, Chapter 6

Section 1.4.5.1.2 is being amended to correct a technical error in the current regulations. A building from which all acute care services have been removed may still be considered a hospital building, but would not be subject to the seismic retrofit provisions of SB 1953. The applicable requirements and authority having jurisdiction will vary, depending on the new use of the building.

Section 1.5.2 is being amended to make the requirements consistent with existing statute Health and Safety Code 130063.

Part 1, Chapter 7

Section 7-113 is being reformatted for clarity.

Section 7-115 is being reformatted for clarity, and amended to clearly define the roles of architects and engineers in general responsible charge of health facility construction projects, and for architects and engineers responsible for preparing plans for health facility construction projects.

Section 7-133 is being amended to make specific the statutory requirements of Health and Safety Code Section 129785 regarding fees paid to the Office for plan review and field observation of health facility construction projects. An applicant health facility pays the Office a fee for these services which is based on a percentage of the estimated construction cost at the time of project submittal. The amendments make clear that the applicant may be responsible for paying additional fees to the Office, if upon completion of a project, the actual construction costs exceed 5% of the estimated construction cost by which the original fee payment was computed. The amendments also clarify that the "minimum filing fee" of \$250 for a project is nonrefundable and will be included in the calculation of the total fee paid for OSHPD's services.

Section 7-134 makes specific the statutory requirements of Health and Safety Code Section 129785. Statute requires that OSHPD adopt regulations that specify various circumstances under which a fee refund would be applicable. Currently, OSHPD charges a fee for plan review and field observation services for a health facility construction project. The current fee for hospital construction project is 1.64% of the estimated construction cost and for skilled nursing facilities it is 1.5% of the project's estimated construction cost. The applicant health facility provides the estimated cost amount on the project submittal application. The Office will invoice the applicant for the project fee amount based on that cost estimate. Section 7-134 will provide requirements regarding circumstances under which a refund of all or a portion of fees submitted to OSHPD may be issued to the applicant. Specifically:

Section 7-134 (a) provides procedural requirements regarding refund requests and identify circumstances under which the Office will not issue a refund.

Section 7-134 (b) makes specific the requirements of Health and Safety Code Section 129785. This statute requires that a fee refund will be issued to the applicant when the estimated construction cost of a project exceeds the actual construction cost by more than 5%. The applicant would receive a refund of the excess portion of fees paid which would be based on the applicable hospital or skilled nursing facility fee schedule (as specified in Section 7-133) and calculated on the amount the estimated cost exceeds the actual construction cost. This refund requirement would apply to completed construction projects. Statute also provides an exception to this refund situation. It requires that in order for an applicant to receive a fee refund health facility project, construction of at least 75% of the square footage for must be complete. Additionally a refund will not be issued if the scope of the originally approved construction project is reduced by 25% or more.

Section 7-134(c) makes specific the requirements of Health and Safety Code Section 129785. This statute requires that the Office, identify in regulation, "other" circumstances when the Office will issue a refund for fees paid. The circumstances outlined in section 7-134(c) apply to refunds for projects cancelled or withdrawn by the applicant. When construction plans and specifications are submitted to the Office they are reviewed by architects and engineers for approval and building permit. Upon commencement of construction the field staff provide review and observation of the facility construction. The plan review services equate to approximately 70% of the full services provided by the Office for a project, with approximately 30% of the services being field construction related. The Office used these percentages to determine the percentage of fee that may be refunded for projects that are withdrawn before completion. The \$250 minimum filing fee, as established in Section 7-133(a)(3), is nonrefundable.

Section 7-144 (b) is being added to clarify that when a lead inspector is identified for a construction project, the lead inspector must be certified in a class appropriate for the scope of the project.

Section 7-144 (c) is being added for clarification. The amendments make reference to other sections of Title 24, Part 1, California Building Standards Administrative Code which are related to hospital construction "inspection" but are located in another "article" of Part 1. These referenced sections provide requirements for approval of a hospital inspector for a project and inspector's performance on a project.

Sections 7-161, 7-163, 7-165 and 7-171 are being amended to specify that the timeframes for the progressive steps in appeals to the Hospital Building Safety Board will be calculated in "business" days rather than "days". Using "business" days eliminates the weekend days which are typically nonworking days. Additionally, the number of days for some procedural steps are being increased to ensure that the HBSB staff, HBSB members, the appellant and other parties involved in the appeal process have adequate time to review documents, coordinate meeting arrangements, prepare and distribute applicable notifications and related documents regarding the appeal.

Section 7-191 (a)1. (E),(F), (G) & (J)

(E) Estimate of Value of Services – This section is being repealed, in part, to more clearly define the negotiation process for establishing the hourly billable rates and selection of firms for provision of contract services.

(F) Fee Negotiation with Firms – This section is being amended to more clearly define the negotiation process for establishing hourly billable rates, timeframes for response, and selection of firms for retainer contract services. The amended provisions also stipulate requirements for the contract provisions as to time and monetary limitations. This amended language defines current and future contracting procedures of the Office.

(G) Services Negotiations with Firms - This section is being amended to more clearly define the negotiation process for awarding contracts or assignments. The amended language stipulates the number of opportunities to respond, timeframes for response and the Office's role in selecting a firm for award of contracts or assignments. This amended language defines current and future contracting procedures of the Office.

(J) Contracting in Phases- This section is being amended to add clarifying language.

Section 7-200 (a) (1) & (2) makes an editorial change.

Section 7-200 (a) (3) refers to Section 7-204(c)1 to identify the areas of construction specialty that a Class "C" Hospital Inspector may inspect for a hospital project.

Section 7-203 is amended to name the form for verification of citizenship and refer to the new section where requirements for verification of citizenship will be located. Editorial change in paragraph (b).

Section 7-204 (c) expands the experience necessary to qualify for a Class "C" Hospital Inspector exam by including experience as a representative in technical inspection for a local fire authority, testing lab and specialty contractor. In addition, nationally recognized organizations test and issue certification in various construction inspection specialties.

The certifications listed in this section are known to test the technical knowledge and skills required to inspect hospital construction projects.

Section 7-204(d) Requirements for verification of citizenship for hospital inspector certification applicants are being relocated to the end of the section for clarity.

Section 7-205 is being repealed because the requirement is outdated. When the regulations for the Hospital Inspector Certification Program were adopted in 1997, Section 7-205 provided language to allow existing hospital inspectors to maintain their current certification for three years. Existing inspectors were given this three-year period within which to "recertify" under the new certification program regulations. Without this recertification their original certification would expire. This "grandfathering" period has expired, therefore, Section 7-205 is no longer necessary.

Section 7-207(b) identifies the areas of knowledge and abilities to be tested in a Class "A", "B" or "C" exam. It also specifies that for Class "C" inspector candidates, the inspection certification of an exam candidate may be substituted for the technical portion of the exam.

Section 7-207(c) this subsection applies to only the Class "A" and "B" hospital inspector exam. Candidates for these exams must have a passing score in all applicable sections of the exam. This is not applicable to Class "C" exam.

Section 7-207(d) is added to specifically addresses the Class "C" exam. This exam does not contain more than one section therefore the candidate must obtain an overall passing score.

Section 7-210, exception 2 is being deleted, because it is outdated and no longer needed.

Section 7-212(b)(2) is editorially amended so that the requirement will be applicable to certification in areas of construction for all three hospital inspector Classes.

Section 7-212(c) is amended to repeal outdated and unnecessary language.

Section 7-216 is added. Requirements for verification of citizenship of hospital inspector candidates are relocated to this section.

Section 7-2106 (c) (1) is being amended for clarity and consistency with other OSHPD fee requirements in Title 24, Part 1.

Section 7-2106 (c) (6) is being repealed because the fee refund requirements under the new Section 7-2107 will replace this language.

Section 7-2107 is being adopted to make specific the requirements of Health and Safety Code Section 129785. This statute requires that the Office identify in regulation the circumstances under which the Office will issue a refund for fees paid for plan review and field observation. This new Section 7-2107 applies to refunds for projects submitted to the Office regarding the types of clinic facilities, as identified in Section 7-2100 (a) (1), (2), (3) and (4). Specifically, these clinics are: (1) licensed surgical clinic, (2) licensed chronic dialysis clinic, (3) a surgical or chronic dialysis clinic which is a freestanding building but is under a hospital license, and (4) a freestanding building which provides outpatient clinical services, other than surgical or chronic dialysis, and is under a hospital license.

Clinic construction projects, in most cases, are submitted to the local building jurisdiction which will provide plan review, inspection and certification that the clinic construction project meets the provisions of Title 24, California Building Standards Code. However, in the circumstances where the local building jurisdiction will not provide these services for clinics identified in 7-2100 (a) (1), (2) or (3), the Office may agree to provide plan review and certification and will charge a fee for actual cost of the services. If the fees paid for a clinic project submitted to the Office exceed 5% of the actual cost of the services, a fee refund will be issued pursuant to new Section 7-2107(b). If the clinic project is withdrawn by the applicant, a refund of the unexpended fee amount will be issued as described in new Section 7-2107 (c).

In some cases, as described in Section 7-2104, the hospital governing authority may request that the Office perform plan review and building inspection for those outpatient clinics under a hospital license, which are identified in 7-2100 (a) (3) or (4). If the Office accepts the request, then the applicant will be charged a fee pursuant to Section 7-133 (a) (1), which is calculated at 1.64% of the estimated construction cost for the project. If fees paid, pursuant to 7-133 (a) (1), for a clinic project exceed 5% of the estimated construction cost a refund for the excess portion paid will be issued pursuant to the

applicable requirements of new Section 7-134. If the clinic project is withdrawn the refund will be calculated pursuant to Section 7-133. These refund provisions will make specific the requirements of Health and Safety Code Section 129785.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENTS:

There are no technical, theoretical and empirical studies or documents to be identified regarding the development of these proposed regulations.

CONSIDERATION OF REASONABLE ALTERNATIVES

There were no alternatives considered by the Office. The proposed code changes will eliminate outdated requirements, provide clarification of the existing regulations and implement existing statutory requirements.

REASONABLE ALTERNATIVES THE AGENCY HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

These proposed regulations will not adversely impact small businesses.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS.

The scope of the proposed code changes is to repeal outdated requirements, make technical modifications for clarity of existing regulations and implement existing statutory requirements. The regulations proposed will have no significant adverse impact on businesses.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

N/A